IN THE HIGH COURT OF DELHI AT NEW DELHI

MAC.APP.No.263/2004

Shri Ajit Singh ..... Appellant
! through: Mr.Rajiv Khosla, Advocate

VERSUS

$ Shri Raj Singh & Ors. ..... Respondents
^ through: None.

% DATE OF DECISION: 28-05-2007

CORAM:
* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

: PRADEEP NANDRAJOG, J.
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1. Appellant, Ajit Singh is aggrieved by the quantum of compensation awarded to him.

2. Total compensation awarded to him is Rs.2,69,400/-. Break up is as under :-

(a)	Loss of earning for a period of 6 months	:	Rs. 9,000/-
(b)	Loss of future income	:	Rs.2,30,400/-
(c)	Medical expenses	:	Rs. 10,000/-
(d)	Conveyance expenses, Special diet etc.	:	Rs. 5,000/-
(e)	Pain and suffering	:	Rs. 15,000/-
	TOTAL	:	Rs.2,69,400/-

3. Since fairness of compensation assessed is the only matter which was debated by the learned counsel for the appellant, I need to note only such facts as are relevant for determination of said issue.

4. The date of accident is 31.12.1989. Age of the appellant as on the date of accident was 25-26 years. Injured claimed to be earning his livelihood by working as a driver with M/s. Container Way Agencies Pvt. Ltd.

5. As a result of the injuries suffered by the appellant his right leg had to be amputated from above the knee. Disability certificate (page 117 of LCR) reveals that he suffered permanent disability of 80%.

6. Period of treatment spreads over different dates. Ex.P-6 reveals that first period of hospitalization was at Hindu Rao Hospital for a period of 5 days, i.e. from date of accident, 31.12.1989 to 5.1.1990. Medical bill (page 110 of LCR) reveals that injured remained admitted in Ganga Ram Hospital from 05.01.1990 to 18.1.1990. Ex.P-2 reveals further hospitalization of injured at Delhi Cantt. Hospital from 18.1.1990 to 7.2.1990.

7. It is settled law that when a person causes harm of any kind to another person, whether it is personal injury or damage to property or functional loss, the normal remedy which the law gives is a right to recover damages. In calculating damages one is required to consider what is the pecuniary consideration which will make good to

the sufferer, as far as money can do so, the loss which he has suffered as the natural result of the wrong done to him.

8. Concern of the Courts is to see that the victims of the road accident or the dependents of the deceased victims, should be placed, as far as possible, in the same pecuniary position as they would have been, had there been no accident. Compensation assessed is not exemplary or punitive. It is compensatory. If as a result of the accident, human anatomy is shattered or a limb is damaged, as far as possible, loss occasioned in terms of money to the victim of the unfortunate road mishap has to be recompensed. Damages have to be full and adequate.

9. Learned counsel for the injured has assailed the award under the head 'pecuniary damages' only on quantum of compensation awarded towards loss of future earnings.

10. As noted hereinabove, Tribunal has awarded Rs.2,30,400/- towards loss of future earnings.

11. Learned counsel has challenged the same on 3 counts. One, that the Tribunal has erred in determining the monthly income of the injured at the time of the accident; two, Tribunal has erred in ignoring prospects of future increase in the income of the injured; three, that the Tribunal erred in assessing functional disability suffered by the injured as 80%.

12. On the issue of income after reverting to the claim petition

and evidence on record, I note that it was stated that injured was working as a driver at the time when accident in question took place. It was further stated that he was drawing a salary of Rs.2500/- per month. To establish the earnings of the injured, a document, i.e. Ex.P-4 purported to be a salary certificate issued by the employer of the injured was placed on record.

13. Tribunal believed that injured was working as a driver. However, noting that employer of the injured did not step into the witness box to prove Ex.P-4, i.e. alleged salary certificate, the Tribunal disbelieved that injured was earning Rs.2500/- per month at the time of the accident.

14. Tribunal has assessed the monthly income of the injured in the light of minimum wages notified under the Minimum Wages Act and determined the same at Rs.1500/- per month. Assessing functional disability suffered by the injured as 80% and applying multiplier of 16, total compensation for loss of future earnings has been determined by the Tribunal at Rs.1500 x 12 x 16 x 80% = Rs.2,30,400/-.

15. Learned counsel for the appellant contended that Tribunal erred in not placing reliance on Ex.P-4. He further contended that burden of proof envisaged under the M. V. Act is liberal. The principles relating to standard of proof as enunciated under Code of Civil Procedure do not apply to M.V. Act.

16. I agree with the learned counsel that strict standard of

proof is not envisaged under M.V. Act, but some minimum standards of proof have to be adhered to. Self serving statement uncorroborated by other evidence have to be treated with a pinch of salt. In the absence of any proof to show that Ex.P-4, i.e. the alleged salary certificate was issued by the employer of the injured, Tribunal has rightly not placed reliance on the same.

17. However, I agree with the counsel that while determining loss of future earnings, Tribunal erred in not giving the benefit of futuristic income of the injured.

18. It is now well settled that while estimating future loss of income, the court has to take into account future prospects of the injured. (See *K.Narsimha Murthi Vs. The Manager, Oriental Insurance Co. Ltd. & Anr.* 2004 ACJ 1109).

19. A perusal of the minimum wages show that to neutralize increase in cost of living and price index, minimum wages virtually double after every 10 years. Take for instance, minimum wages for skilled labour as on 1.5.1989 was Rs.1000/- per month. The same rose to Rs.2772/- in the year 1999 and further rose to Rs.3589/- in the year 2005. Meaning thereby, there has been an increase of nearly 177% in the minimum wages between the years 1989 to 1999 and 81% in the next 6 years, i.e. from 1999 to 2005.

20. Injured was aged 25-26 years when accident occurred. It could be reasonably be expected that he would have worked till the

age of 60 years. Thus benefit of future increase in wages has to be granted.

21. On the issue of functional disability, it is not entirely right to always make the future loss of income co-extensive with the extent of permanent disability. No mathematical formula can be applied regardless of the avocation or profession or business of the injured. The problem has to be approached from the point of view : what is the resultant effect on the actual earnings or the earning capacity.

22. In an accident, if a man is disabled for a work which he was doing before the accident, that he has no talents, skill, experience or training for anything else, such a man for all practical purposes has lost all his earning capacity he possessed before the accident and he is required to be compensated on the basis of total loss.

23. At this juncture, I note decision of the Karnataka High Court reported as *R.Venkatesh Vs.P.Saravanan & Ors.* 2002 ACJ 1743. In said case, Karnataka High Court while dealing with a personal injury case where due to personal injury sustained by the claimants therein, his left lower limb was amputated, held that in terms of functional disability, the disability sustained by the claimant is total and 100%. In para 9 of the judgment, it was observed as under :-

> "As a result of the amputation, the claimant has been rendered cripple. He requires help of the crutches even for walking. He has become unfit for doing any kind of manual work. As he was earlier a loader doing a manual work, the amputation of his left leg below knee, has rendered him unfit for any kind of manual work. He has no education. In

such cases, it is well settled that the economic and functional disability will have to be treated as total even though the permanent disability is not total."

24. Learned counsel contended that compensation awarded under the head 'non-pecuniary damages' is grossly inadequate.

25. As already noted hereinabove, Tribunal has awarded only Rs.15,000/- for pain and suffering under the head 'non-pecuniary damages'.

26. Non-pecuniary loss may include the following :

(i) Pain and suffering.

(ii) Damages for mental and physical shock.

(iii) Loss of amenities of life which may include a variety of matters i.e. on account of injury the injured may not be able to walk, run or sit etc.

(iv) Loss of expectation of life i.e. on account of injury normal longevity of the life of the person concerned is shortened.

(v) Disfigurement.

(vi) Discomfort or inconvenience, hardship, disappointment, frustration and mental stress in life.

27. Where a leg gets immobilized, a person suffers various kinds of loss of pleasures of life. Free movement would be one. Said injury has also diminished his marriage prospects.

28. There cannot be an absolute measure to compensate a non-pecuniary loss. But, some guidance can be had from the extent of

injury and period of hospitalization coupled with the disability suffered.

29. I note various judicial trends which are as under :-

(i) *Amar Singh Vs. Ishwar,* 1999 ACJ 809, Supreme Court awarded compensation of Rs.1,00,000/- under the head 'pain, shock and suffering' to an injured who suffered 30% permanent disability and remained in hospital fro a period of more than 3 years though intermittently on account of injuries sustained by him in a road accident.

(ii) *Dr.(Ms.) K.R.Tandon Vs. Om Prakash & Anr.* 199 ACJ 1299, Supreme Court awarded a compensation of Rs.1,00,000/- under the head 'non-pecuniary loss' to an injured who sustained injuries of ribs, spine and hip-joint in a road accident.

(iii) *New India Assurance Co. Ltd. Vs. K.Kartheeswaran & Ors.* 2003 ACJ 1444. Injured was aged 17 years. He suffered amputation of right leg above knee. Compensation in sum of Rs.1 lac for pain and suffering awarded by the Tribunal was sustained by the Karnataka High Court.

(iv) *B.N.Kumar vs. D.T.C.,* 118 (2005) DLT 36.

In said case, injured sustained crush injuries on his right leg leading to its amputation above knee in a road accident on 5th November 1987. He suffered a permanent disability of 85%. Noting various judgments wherein

Courts had awarded Rs.3,00,000/- under the head non-pecuniary damages, a Single Judge of this Court awarded Rs.75,000/- for 'pain and suffering' and Rs.2,00,000/- for 'continuing disability suffered by him'. Thus, a total of Rs.2,75,000/- was awarded under this head.

(v) *Fakkirappa Vs. Yallawwa & Anr.* 2004 ACJ 141

In said case, a minor male child sustained grievous injury in a road accident which occurred on 8.5.2000 resulting in amputation of his left leg below knee. Considering the gravity of injury suffered by the injured, Division Bench of Karnataka High Court awarded Rs.50,000/- for pain and suffering, Rs.1,00,000/- for loss of amenities of life, Rs.50,000/- for loss of marriage prospects, Rs.50,000/- for loss of expectation of life and Rs.1,50,000/- for damages for amputation of leg. Thus, total compensation of Rs.4 lacs was awarded to the injured under the head 'non-pecuniary damages'.

(vi) *K.Shankar Vs. Pallavan Transport Corporation,* 2001 ACJ 488

In said case, injured sustained serious injuries on his right leg in an accident on 14.2.1989. His right leg was amputated and he suffered permanent disability of 80%.A learned Single Judge of Madras High Court awarded

Rs.80,000/- for permanent disability, Rs.50,000/- for pain and suffering, Rs.50,000/- for loss of expectation of life and proper marital alliance and Rs.1,00,000/- for mental agony. Thus, a total compensation of Rs.2,80,000/- was awarded to the injured.

(vii) *Bhagwan Singh Meena Vs. Jain Kishan Tewari* 1999 ACJ 1200

In said case the injured sustained severe and serious injuries on account of road accident. His right leg was amputated. A learned Single Judge of Rajasthan High Court awarded compensation of Rs.3,00,000/- under the head 'non-pecuniary damages'.

30. In the instant case, I have before me the evidence of appellant being admitted for operation once. There are 3 spells of hospitalization spreading over 5 days, 13 days and 14 days respectively.

31. I have also before me the evidence that leg of the injured was amputated. The evidence also shows a permanent disability of 80%, meaning thereby, that his mobility would be affected.

32. From the judicial trends and the afore-noted facts, it is evident that in the instant case, there is inadequacy in the compensation awarded towards pain and suffering as also amenities of life and loss of marriage prospects. I note that latter 2 have been

totally ignored by the Tribunal.

33. The idea under the M.V.Act, 1988 is to provide just, fair and reasonable compensation. Noting that injured/appellant has not been adequately recompensed under the heads 'non-pecuniary damages' and 'loss of future income', I consider it reasonable to award compensation in sum of Rs.4,50,000/- to him under all heads i.e. loss of future increased earnings, pain and suffering, damages for mental and physical shock, loss of amenities of life which may include a variety of matters i.e. on account of injury the injured may not be able to walk, run or sit etc., loss of expectation of life i.e. on account of injury normal longevity of the life of the person concerned is shortened, disfigurement, discomfort or inconvenience, hardship, disappointment, frustration and mental stress in life and loss of future income.

34. As already noted, Tribunal has awarded compensation in sum of Rs.2,69,400/-. Thus, compensation is enhanced by a further sum of Rs.1,80,600/-.

35. I direct that enhanced compensation shall be paid together with interest @ 6% p.a. from date of claim petition till date of realisation.

36. Enhanced compensation together with accrued interest thereon shall be kept in a fixed deposit with a nationalized bank for a period of 5 years.

37. Appeal is accordingly disposed of in terms of paras 34, 35

and 36 above.

38. No costs.

39. LCR be returned.

May 28, 2007 PRADEEP NANDRAJOG, J.
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